

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

ZACHARY CARSON DIETZ,

Plaintiff,

vs.

DEPARTMENT OF SOCIAL SERVICES
CHILD SUPPORT, OFFICIALS AT
DEPARTMENT OF SOCIAL SERVICES,
INDIVIDUAL AND OFFICIAL CAPACITIES;
WENDY KUHNERT, EMPLOYEE AT
RAVEN IND, INDIVIDUAL CAPACITY;
JESSICA BAVERLE, INDIVIDUAL
CAPACITY; MICHELLE JOHNSON,
INDIVIDUAL CAPACITY,

Defendants.

4:23-CV-04114-RAL

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO PROCEED IN
FORMA PAUPERIS AND REQUIRING
PLAINTIFF TO PAY AN INTIAL PARTIAL
FILING FEE

Plaintiff Zachary Carson Dietz filed a pro se lawsuit under 42 U.S.C. § 1983. Doc. 1. Dietz is an inmate at the Yankton Community Work Center. Id. at 1. He filed a motion for leave to proceed in forma pauperis and provided the Court with his prisoner trust account report. Docs. 2, 3.

I. Motion for Leave to Proceed In Forma Pauperis

Under the Prison Litigation Reform Act, a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The Court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, “[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment

plan.” Henderson v. Norris, 129 F.3d 481, 483 (8th Cir. 1997) (per curiam) (alteration in original) (quoting McGore v. Wigglesworth, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Dietz reports an average monthly balance for the past six months in his prisoner trust account of \$37.70 and an average monthly deposit of \$64.15. Doc. 3 at 1. Based on this information, the Court grants Dietz leave to proceed in forma pauperis, but he must pay an initial partial filing fee of \$12.83 (20 percent of his average monthly deposit). Dietz must pay the initial partial filing fee of **\$12.83 by August 25, 2023**. His failure to pay the filing fee by August 25, 2023, will result in the dismissal without prejudice of his complaint.

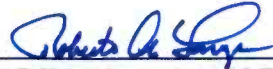
Accordingly, it is

ORDERED that Dietz's motion for leave to proceed in forma pauperis, Doc. 2, is granted. Dietz will make a payment of **\$12.83 by August 25, 2023**, made payable to the Clerk, U.S. District Court. If Dietz does not pay the initial partial filing fee by August 25, 2023, his complaint will be dismissed without prejudice. The Court will conduct a 28 U.S.C. § 1915A screening after Dietz pays his initial partial filing fee. It is finally

ORDERED that the institution having custody of Dietz is directed that whenever the amount in Dietz's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Dietz's trust account shall be forwarded to the U.S. District Court Clerk's Office under 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full.

DATED July 25th, 2023.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Roberto A. Lange", is written over a horizontal line.

ROBERTO A. LANGE
CHIEF JUDGE